IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.861 OF 2003

IN

SUIT NO.1325 OF 1988

Nayantara Development Corpn. .. Plaintiffs

Vs.

G.K.Builders and Ors. .. Defendants

Mr.Shailesh Shah a.w D.V.Merchant i/b Dhru Liladhar and Co. for the plaintiffs

Mr.P.N.Gangwani i/b Nandlal Kothari and Sabir for the defendant no.1 and 2

Mr.K.N.Gaikwad for defendant no.3

CORAM : S.U.KAMDAR, J

DATED : 25TH AUGUST, 2005

P.C.:

1. The present motion is taken out for a mandatory direction to the Court Receiver to permit the defendant no.1, 2 and 4 as agent of the Court Receiver to complete the construction of the building in accordance with the sanction plan. Reliance has been placed on an order dt.31.1.91

passed in Notice of Motion No.1354 of 1988.

2. Subsequent thereto by two orders dt.26.3.92 and 25.7.95 in Notice of Motion No.804 of 1992 this court has restrained the defendant no.1 and 2 from carrying on construction because there was no valid commencement certificate obtained by defendant no.2 from B.M.C.

3. The learned counsel for defendant no.1 and 2 states that today he has got the commencement certificate though the same is already expired but according to him it can be validated. On the aforesaid ground, the present motion is taken out for interim order of mandatory nature to permit defendant no.1 and 2 to carry on construction on the said property. It is well settled that interim orders are passed to preserve the property and the status of the property as on the date of filing of the suit. The learned counsel for defendant no.1 and 2 however states that the property should be permitted to be developed at the interim stage itself. The suit is for specific performance for the agreement for sale dt.10.1.85 and writing

dt.16.1.87. In my opinion, till the suit is decided it is not possible to permit the plaintiffs to construct the suit property as if there is already a decree granted in favour of the plaintiffs. In my opinion, no orders in the nature sought for can be granted. Reliance placed on the order of single Judge (Variava,J) dt.31.1.91 is totally misplaced because the said order is of 1991 and inspite thereof plaintiffs have taken no steps for construction for a period of 14 years. Furthermore, by subsequent orders dt.26.3.92 and 25.7.95 defendants have been restrained from carrying on construction. In my opinion, there are no extraordinary circumstances existing in the present case calling for orders of mandatory nature. In that view of the matter, motion dismissed. No order as to costs.